STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of THOMAS/ANGLIN/DAVIS, Minors.

UNPUBLISHED
September 30, 2014

No. 319857
Oakland Circuit Court
Family Division
LC No. 13-812499-NA

Before: METER, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Respondent mother appeals as of right from orders terminating her parental rights to three minor children pursuant to MCL 712A.19b(3)(l) (parental rights to another child were involuntarily terminated). We affirm.

In September 2013, a petition was filed requesting jurisdiction over the children and termination of respondent's parental rights. The petition alleged that the police were called to respondent's home on September 12, 2013, because of respondent's argument with a neighbor. When the police arrived, they found respondent highly intoxicated while caring for her children, and she passed out and had to be transported to the hospital. The petition further alleged that respondent had a Children's Protective Services history dating back to 2004, and that her rights to two older children had been terminated in Jackson County. Following a trial, the court assumed jurisdiction over the children. Although the petition also cited MCL 712A.19b(3)(g) and (j) as grounds for termination, the court found that termination was warranted under subsection (3)(l) only.

The court referred respondent for a psychological evaluation, which took place in November 2013. In the meantime, respondent started supervised visits with her children, attendance at parenting classes, and participation in random drug screens. The court conducted a best-interests hearing in November 2013. Following the proofs, the court found that termination was in the children's best interests and entered an order terminating respondent's parental rights, from which respondent appeals.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The trial court's decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding of fact is clearly erroneous if, although there may be evidence to support it, this Court

is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Respondent first challenges the trial court's finding that statutory ground to terminate her parental rights had been established. Respondent argues that termination was not warranted under subsections (3)(g) and (3)(j). However, the trial court did not base termination on these provisions. The court expressly found that termination under those provisions was not appropriate and terminated respondent's parental rights only under subsection (3)(l).

The trial court did not clearly err in finding that the ground for termination under subsection (3)(l) was established by clear and convincing evidence. Termination under that provision is appropriate where the parent's rights to another child were terminated as a result of proceedings under section 2(b) or a similar law of another state. Here, the evidence clearly established that this occurred.

However, respondent argues that the prior termination order is void because she had no notice of those proceedings and was therefore denied due process. This argument amounts to an improper collateral attack and is therefore not a basis for reversal. *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987); *In re Hatcher*, 443 Mich 426, 438-440; 505 NW2d 834 (1993).[1]

At any rate, even if we were to further review this issue, we would find no basis for reversal. Respondent failed to raise this issue below and thus the issue is not properly preserved. *Mitchell v Mitchell*, 296 Mich App 513, 521; 823 NW2d 153 (2012). Review, therefore, is for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). To avoid forfeiture under the plain error rule, respondent must show that (1) an error occurred; (2) the error was plain, i.e., clear or obvious; and (3) the plain error affected substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011).

Respondent has not established that a plain error occurred. Respondent asserts that her due process rights were violated because she was not given proper notice of the proceedings in the Jackson County case, which resulted in termination of her parental rights in 2005. The fundamental requirement of due process of law is the opportunity to be heard at a meaningful time and in a meaningful manner, and the opportunity to be heard includes the right to notice of that opportunity. *In re Rood*, 483 Mich 73, 92; 763 NW2d 587 (2009). Procedures to ensure due process to a parent facing termination of his or her parental rights are set forth by statute, court rule, Department of Human Services policies and procedures, and various federal laws. *Id*. at 93. Under both statute and court rule, the parent of a child who is the subject of a child protective proceeding in this state is entitled to personal service of a summons and notice of the proceedings. MCL 712A.12; MCR 3.920(B). In general, the failure to provide notice of a hearing by personal service as required by MCL 712A.12 is a jurisdictional defect that renders

[1] To the extent respondent argues about other purported deficiencies concerning the prior termination, these arguments also amount to an improper collateral attack.

all proceedings void. *In re Atkins*, 237 Mich App 249, 250-251; 602 NW2d 594 (1999); *In re Adair*, 191 Mich App 710, 713-714; 478 NW2d 667 (1991).

Respondent asserts that the testimony established that she was not personally served in the Jackson County case. Our review of the record indicates that there was no actual testimony specifically concerning service in the prior proceedings. To the extent that the testimony suggests a lack of personal service,[2] respondent did not establish plain error because personal service is not required in all cases. Other means of service are permitted where personal service is impracticable. See MCL 712A.13 and MCR 3.920(B)(4)(b).[3] The testimony established that respondent could not be located during the prior proceedings, and those circumstances would have justified alternative service. See *In re SZ*, 262 Mich App 560, 569-570; 686 NW2d 520 (2004) (finding no error in ordering substituted service where the respondent's whereabouts were unknown). Furthermore, respondent has not established that some form of alternative service did not occur. The record contains no suggestion of deficiencies in service in respondent's prior case and, other than her speculation, she has presented nothing suggesting that any error occurred.[4]

Respondent argues that the trial court erred in determining that termination of her parental rights was in the children's best interests. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if the court also finds that termination of parental rights is in the best interests of the child. MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In deciding a child's best interests, a court may consider the child's bond to his parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

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[2] The evidence established that the prior proceedings were started because respondent's child needed medical attention and respondent could not be located and that services were not provided to respondent because she could not be located.

[3] Under MCL 712A.13, if the judge "is satisfied that it is impracticable to serve personally such summons or the notice," the judge "may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct." Similarly, under MCR 3.920(B)(4), the summons must be served by delivering it to the respondent personally, unless such service is "impracticable or cannot be achieved." The court may then order that service be accomplished "in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication." MCR 3.920(B)(4)(b).

[4] While respondent also argues that termination was not warranted because services in the present case were only offered for a short period, petitioner was not required to provide any reunification services at all because the goal was termination. *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009); see also *In re Smith*, 291 Mich App 621, 623; 805 NW2d 234 (2011).

In concluding that termination of respondent's parental rights was in the children's best interests, the trial court mentioned respondent's two earlier terminations and her termination from parenting classes, lack of compliance with random drug screens, and missed visitation sessions. The court also noted respondent's history of drug use and mental health issues and the troubling psychological evaluation results. The court noted that respondent loved her children, but that they were young and vulnerable and that she struggled to watch all three of them during visits. All of these findings are supported by the evidence and are not clearly erroneous.

Respondent argues that her caseworker at Community Network Services offered favorable testimony, stating that respondent was willing and receptive to services, wanted to get started on addressing substance abuse, and had potential for insight about her shortcomings and things she needed to do. However, as the court noted, the results of respondent's psychological evaluation revealed troubling findings and the evaluator offered a poor prognosis for respondent. Citing respondent's continued use of drugs during these proceedings[5] and her attitude toward alcohol use, as well as her personality traits of being self-centered and resenting the demands placed on her, the psychologist felt that there was a significant risk of harm to the children if returned to respondent's care and that this risk outweighed any bond the children shared with respondent. Ultimately, the evaluator, as well as two other workers involved in this case, concluded that termination was in the children's best interests and offered compelling reasons for it.

Given all these circumstances, it is clear that a preponderance of the evidence before the trial court established that termination of respondent's parental rights was in the best interests of the children, and the trial court did not clearly err in its best-interests determination.

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly

[5] Respondent submitted several drug screens that were positive for marijuana.